

ARGUMENTS
RESPECTING
INSOLVENCY.

Dedicated to the
Rt. Hon. ARTHUR ONSLOW, Esq;
Speaker of the House of Commons.



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To the Right Honourable

ARTHUR ONSLOW, Esq;

Speaker of the House of Commons.

SIR,

THE Reason of my Addressing the following Arguments to you, is founded on the general Reputation of your Consummate Experience in the Law, Acquaintance with Business, your Character as a Reasoner, and in whose Breast universal Benevolence and good Will for Mankind, reigns supreme,

I do not conceive, Sir, that there is a single Argument advanced, that you were not previously Master of, tho' there may be some Transactions in common Life,

opened to your View, that your high Station, and constant Attention for the publick Service, may have occasioned your being a Stranger to; The bringing of which to Light, will prove, I hope, to the Emolument of many, as they will more particularly attend to the Considering of them, if the Reasoning thereupon has the Happiness of meeting your Approbation, and the Esteem of the Honourable House, wherein you preside.

The Distressed, Sir, cannot sufficiently express their Gratitude to Heaven, for placing you in your present Dignity; where, by your Learning, Judgment, Eloquence, and Impartiality, you are capable of Contributing so highly, to the promoting of a Design, calculated for the general Welfare, Peace, Friendship, and social Community among Men, hitherto thought impracticable; yet I conceive, in no Sense difficult, if these Arguments, aided by the Wisdom of a **HOUSE OF COMMONS**, should have the good Fortune to unbiass some Minds, and convince them of the good Effects naturally resulting from a general Act of Insolvency, established on the strictest Principles of Equity, and tending at once to make Men wise, honest, and happy.

The simple Principle we reason upon is this, Why should not the Man who is To-day arrested for a Debt, which he cannot, or will not pay, be permitted or obliged, immediately to make up his Accounts, and satisfy all his Creditors to the best of his Abilities, and not be suffered to go on heaping Incumbrance on Incumbrance, by the Addition of his own and his Creditors Expences, until he has nothing left to pay any body with? It is presumed, Sir, that this can be done, the Instant a Man is attach'd; but if the Debt is acknowledged, and the Debtor either finds Security, or continues in Custody, I see not the Reason of enhancing the Reckoning, while his Affairs are settling. This intends no more, than a general Act of Bankrupcy, on a Method less Expensive, yet equally Effectual; and if it be right in a Bankrupcy, it is more so in this Light.

Some Men say, that Acts of Insolvency make very free with the Creditor's Property. They must either mean, that the Person of the Debtor is the Property of the Creditor, or they mean nothing: But, you, Sir, know that no Man's Person, by our Laws, either is, or
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can be the Property of another, to do what he pleases with. Nay, not a Man's own Wife, nor a Negroe that he has purchased with his Money. A Man has Property in his Wife to a certain Degree, and so he has in his Servant by Contract, but the ultimate Property is in the State. And if a Man has not Power by Law over the Servant he has purchased abroad, how much less shall he have over a Fellow Subject, who is merely unhappy. Men ignorant of the Nature of our Constitution, talk these Things at random, not considering, that the same Law, which makes a Negroe free the Instant he lands here, intends not any Man should be the Slave of another, no nor even his Servant but by Contract, and then only so long as he treats him well; how much less, that he shall have Power to imprison a Debtor for Life, starve him and his Family, and rob the Commonwealth of the Benefit of his Labour?

You, Sir, know this, to be only the Habit of the Age, blinded by bad Custom, Prejudice, Partiality, and Ignorance; and are thoroughly sensible, not only of the Right, but also both of the Justice, and Necessity of the Legislature's intervening, when

when the iron Hands of the Law, or rather of the bad Practice of it, aided by the Malice of wilful and designing Men, seeks to divest the Government of its individual Members. Common Equity did the same Thing heretofore; Statutes of Bankrupcy do it to certain Persons now; and for Heaven's Sake, is not one Fellow Subject entitled to this kind of Equity as well as another?

Sir, I speak thus boldly, because I speak to your Understanding, and glory in doing it, though of my own Presumption, because I am sensible, how readily you conceive the Force of the Argument.

And am, Sir, with great Submission,

Sir, your most obedient,

and most Devoted,

humble Servant.

RAPHAEL COURTEVILLE.



ARGUMENTS RESPECTING INSOLVENCY.

MANKIND, considered as social Beings, are under some Necessity of using the best Means in their Power for supporting each other against the Frowns of adverse Fortune: Since no Man is sure, that what is his Neighbour's Fate to Day may not be his own To-morrow, Self-Love, and a Regard to what may happen in the Future, should necessarily induce him so to express his Humanity in the Present, as that, when it comes to be his own Case, he may be justly intitled to equal Beneficence from the rest of his Fellow Creatures.

When Individuals, through a Course of Customs, Prejudices, and wrong Reasonings,

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are gradually deviating from this great Point, so essential to the Peace, and Welfare of the Community, it naturally falls to the Lot of the Legislature to interpose their Power, and to do that by the Force of their Authority, which Men will not do of their own Accord : It seeming as much to conicide with the Nature and Interest of those in Power, that Men should not ruin or destroy one another by the mere Letter of the Law, or because they can do it ; as that they may not be permitted to cut each other's Throats. This being what keeps the Balance even between the Governors and Governed, makes Trade and Credit circulate pleasantly, guards the Weak against the Arts of the Crafty, propagates social Love, which is the Basis of the Peace and Happiness of a Commonwealth, and harmonizes the whole System.

The Notion of putting People in Prison for Debt is originally founded on the Laws of *Meum* and *Tuum*, that is to say, the Justice of, and Reason why, Men should repay to each other what they borrow, or give an equitable Value for what they purchase. But it was never intended thereby, that either an unhappy, or mistaken Man should be worse punished for a common Debt, than a Felon who takes your Goods from you by Force ; yet if the Maxim be established, That the Debtor is to lie in Prison until his Debt be paid, and he is unable when he goes there, he certainly must lie for Life, and be probably starv'd to Death, which is

is certainly a severer Punishment than being hang'd. The common Argument, That Villains go to Prison, and spend their Creditors Money there, is the very Point we wish to be thoroughly consider'd, and centers in this: If a Law was made in the Nature of a general Bankruptcy, or better consider'd, this Objection would instantly vanish; a Debtor could not go to Prison with his Creditor's Money in his Pocket, nor spend it there; nor could it be spent among Lawyers and Bailiffs, which is still as bad; and perhaps, it is but too true, that more People go to Prison for Costs than for the original Debt; besides the extravagant Sums spent on Bailiffs, and in Spunging-Houses, which is all the Property of the Plaintiff; and if the Debtor is arrested, must be spent, or he treated worse than a Felon. This is obvious to the Knowledge of almost every Man living, and therefore needs no farther Elucidation.

The Argument, That there are many Villains in Prison, is still as little to the Purpose: Why do not the Legislature distinguish between Villainy and Misfortune? It is very easy to leave it to the Sense of the Judges, whether the Debtor has been guilty of Fraud, or is only a common Debtor; and to oblige the one to make Satisfaction, by an adequate Punishment; and the other, on Conviction, by surrendering up his Effects, previously secured in proper Hands, when Oath is rightly made of the Debt, and the Persons who make such Oath, give Security to answer the Consequences; which was the ancient

Method, and still appears so; tho' the Effect is idly eluded.

The personal Dispute between Creditor and Debtor, as Matters are now circumstanc'd, is, which is the honestest Man; and is generally concluded in favour of him who has the most Art, or most Money; yet, tho' the seeming Debtor suffers, the real one often escapes, when Disputes arise in Matters controversial. It follows, that the blending of Men together, as to their moral Characters, because they happen to be in Prison on the same nominal Account, is owing purely to the Want of considering, and examining into the Difference. That every Debtor, truly such, should be made a Felon, if he secrets his Effects, is just; but due Care should be taken, by enquiring how far he has been cheated or impo's'd on by his Creditor; which would often throw the Balance into the contrary Scale. The Art of Creditors in Trade, when they perceive a Man upon the Decline, is first to put bad Goods upon him, and then enter with an Execution on all the rest. The other Creditors feel the Effects of this, and throw the Debtor into Prison; and then spend more Money, to no other Purpose than to divest the Community of one of its Members.

The Wine-Merchant often tops this Part on the Cabinet-maker, Upholsterer, &c. takes their Goods on the Execution, and leaves his own behind; as well knowing, that what he charged at 14 or 15 l. à Hogshead, will never

never sell for above Four or Five, or perhaps for nothing but to make Vinegar of.

In genteeler, or, if you please, idler Life, the Taylor, Broker, Scrivener, &c. make a Property of the unexperienc'd Heir, or young Person of Fortune; they lead him into that Evil which aids his natural Passions, and gradually produces his Ruin; then, if they are not paid their ill-got Gains to the last Farthing, the Rogue is fathered upon him, they cast him into Jail, and thereby prove themselves the honestest Men in the World.

In a Word, the distinguishing of moral Characters by the Test of being in or out of Prison, is as ridiculous as idle; the Argument, in its true Light, is not about Knaves and honest Men, but about Knaves and Fools; yet it seems an odd Kind of Law that confines all the Fools, and lets the Knaves range at full Liberty, without any Kind of Enquiry into their Conduct. To unite against the Weak and Unhappy has something in it more of the brutal than rational Turn of Mind, as may in various Cases be instanced. The Porpoise, when wounded, is pursued to absolute Destruction by its Fellow-Fish; and the stricken Deer is denied Shelter by its natural Companions; yet neither the wounded Porpoise nor stricken Deer merited their Fate more than either of their customary Associates; but where Brutality prevails, the Luckless or Unhappy are ever the Objects whereon to vent Spleen, Malice, and Revenge. It is but of late Years that the poor old Women have been

redeemed from hanging, burning, or drowning, purely because they had lost their Senses; which was parallel, in point of Brutality, to the Actions of the Deer and Porpoises above, and is not very unlike the keeping of Men in Prison, who have not Wit enough to keep themselves out of Debt; except that such Men, though weak, may be of some Service to the Community, such old Women as above of none at all: Yet has Humanity induced the Legislature to take them under their peculiar Protection, while the poor Prisoner is quite neglected; though he rarely suffers alone, being by this Means often obliged to throw his innocent helpless Family on the Parish, and so every Way becoming a Burden to the Community; which multiplies the Evil, and lays the Foundation of reducing us to a Nation of Beggars. The Deity, in the Second Commandment, is made to say, *I am a jealous God, visiting the Sins of the Father upon the Children, unto the third and fourth Generation, &c.* I wish many People have not got this into their Heads, without understanding the Sense, reasoning on the Subject as Fellow-Creatures, or considering the Difference between them and the Power who is presumed to say it.

In former Times distressed People were relieved in Equity; how long that has been left off does not readily occur to my Memory: Herein Equity was right; it distinguished between the Unhappy and the Villain; took the first into its Protection, and left the last to be punished by a due Course of Law.

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I conceive that Bankruptcies were constituted in its Stead ; but as the Laws relating thereto do not affect One in an Hundred of the Unhappy, only because their Debts are generally below the Prescription of such Laws, the Necessity of resuming the antient Equity, in some Shape or other, appears evident, if it be right and just, that the honest Unhappy should be distinguished from the Knaves and the Robber.

I shall mention the *Dutch Laws* hereafter, as grounded on the same Principles with our antient Equity, and conclude this by only two further Remarks.

On the Settlement of the Colony of *Georgia*, some of the ablest Heads in the Trading World were consulted about the necessary Laws relative to Debtor and Creditor : One of the Persons consulted was the late Sir *Gilbert Heathcote* ; a Man that must be allowed to have as much Acquaintance with this Matter as any one living : His Opinion was, That no Person should be allowed to ruin another under Pretence of Credit ; because, says he, in all Societies there will be two Sort of People, *viz.* the *Longheads* and the *Headlongs* : Now if the *Longheads* be permitted to have their full Range, they will ruin the *Headlongs*, and the great End of Society, which is Unity and Equity, thereby instantly cease. Which of these Sir *Gilbert* thought the greatest Knaves, I leave to the Judgment of the Reader ; but I am informed, that his Advice prevailed, and the Colony was thereby happily settled.

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My finishing Instance is common Experience, as it occurs to the Knowledge of almost every Man breathing. There are two Kinds of Debts ; the one created by visible Trust or Contract, recoverable by due Course of Law ; the other invisible, and usually called Debts of Honour. I believe every Man who has liv'd in the World must know, that the last are always best paid, tho' not subject to a legal Obligation ; the Reason is too evident to need any Illustration. I would not lend any Man Money upon Honour, but who is accustom'd to be punctual in re-paying it when in his Power. It would be the same Thing in Trade, was the like Principle pursued, had the Creditor only honest Views, and moderate Profit when he gives Credit ; but, on the contrary, how common is the Phrase between the Creditor and Debtor ; If, says the Creditor, I ever get my Money, I cheat the Debtor ; if he never pays, he cheats me. On such wicked Principles are the Ruin of Multitudes founded.

In a Word, I most humbly recommend to the serious Consideration of the Legislature, Whether some universal Law is not necessary, to prevent, as Sir *Gilbert* phras'd it, the *Longheads* from ruining the *Headlongs* ; to knock up those Banes of social Community, the *Jails* and *Bailiffs* ; and, according to the Custom of those wise, commercial People the *Dutch*, at once obliging every Man to do his Creditor Justice, while the Debtor is at Liberty to contribute all in his Power to the general Welfare of Society ; and I doubt not, but they

they will think this is best begun by a general Act of Insolvence; which, as the Distresses of the Unhappy in this Kingdom have been represented by them, as well as from the great Numbers of Constituents to their several Representatives, I do not in the least doubt, but they will take this Affair into their immediate Consideration.

Taking it for granted to be true, that there are 60,000 Men now in the respective Prisons of this Kingdom, I conceive that 50,000 of them are not regularly indebted 10 l. each; and perhaps out of them again, 20,000 not above 5 l. each; consequently the Imprison'd chiefly consist of poor Labourers and Artificers. If any Man could make out the common Sense of this, the melancholy Reflection would be in some Measure alleviated; but it is aggravated, when we come to consider that 20 l. each would not release these 50,000; that each Debt is so heightened by the natural Extravagance of the Law, supposing each Cause quite undefended, that these unhappy Men are all prevented the Means of paying the original Debt; and yet, by the Malice or Idleness of their Creditors, loaded with double or treble the Sum, and the Community every Year losing at least 20 l. by each of their Labours; and by putting them under the Necessity of using dishonest Arts to recover their Liberty, their Morals are spoil'd and corrupted, and we are thereby every Year laying the Foundation of an Evil not easily eradicated.

I conceive, that when the Legislature are at leisure to weigh and consider this maturely, they will possibly find that there is more Money lost to the Nation, by permitting this injudicious Practice, than the whole Balance of our Commerce produces, and possibly, that the State of *Holland* is chiefly supported by a direct contrary Conduct.

The Law, as it stands, is general, and proposes to compel Men to do each other Justice. This is evidently right; but being bound down to certain stated Rules and Maxims, Equity cannot play its Part, where often it is essentially necessary; nor can there be any significant Difference in the Expence, between a Cause for Five, and 500l. and while the Plaintiff has it in his Power to bring his Action in the Higher Court, it is not in the Defendant's Option to avoid the Increase of his Debt.

In *Ireland* this has been wisely consider'd; and I find amongst the *Irish* Acts, One that prescribes all Debts under 20l. to be sued for in certain inferior Courts; which is possibly the Means of saving many Thousands of useful People from being ruin'd every Year.

There is a trite Adage, which says, *You can have no more of a Cat than her Skin.* Our own Law means the same Thing, however perverted or corrupted by the unthinking Creditor, or Male-Practiser. The Intention of the Law is, that Men should pay their Debts if they can; what is in a Man's Power he may be compell'd to do by Force; but

but what is not in his Power, he can't be compell'd to do; 'tis Nonsense to suppose it. Our Law is founded on the Sense and Reason of Things; yet 'tis strange, that it should have Power to make a Man useless to the Community, and none to make him discover and surrender his Effects; or, by a legal Preference, oblige him to give all to one Creditor, and suffer him to rot in Jail for the rest. A Statute of Bankruptcy, indeed, rectifies this in some Measure, but is in many Instances far from answering the main End; for even then, a Man, tho' honest, may be kept in Prison all his Life, and obliged, on his last Examination, to come in the Way of being arrested.

This will lead us to consider, how far a Creditor is entitled to the Person of the Debtor, and how far our Higher Courts have it in their Power to relieve him. Originally, if I conceive right, a Man's Person was never liable. In Course of Time, the Common-Law only gave the Power by Assumption; for I know of no Statute-Law that gives it, tho' I well remember One, which was made to avoid the evil Consequences of that Assumption in part, by obliging the Sheriffs to take Bail. But from this I would draw a natural Inference, That by the same Power, that they acquir'd a Right to secure and imprison Men's Persons, they have an equal Authority to release them, on making the best Satisfaction in their Power; one Right seeming to be equally well authorized with the other: And I am persuaded, if it could

be done without any Statute-Law, would have a very happy Effect.

The Gentlemen of the Law will excuse me, if I make any Mistake, by barely trusting to my Memory the Result of past reading. But if I remember right, Bills of Conformity in the Court of Chancery were formerly much in Practice, and Men thereby reliev'd against cruel Creditors. Whether these took their Rise on the Common-Law's directing the Capture of Persons for Debt, or whether they were laid aside when Statutes of Bankruptcy took Place, I own, I cannot recollect ; but, I think, they are now demurable to. I think those Bills prayed, that all Creditors should be obliged to come in, and share the Debtor's Effects ; and he be thereupon at Liberty. I remember having demurred to such a one with good Effect, but conceive, that some Law of that Kind ought to be notwithstanding ; for I see not the Justice of one taking all, and another only having the Satisfaction of putting a Man in Jail. The Meaning of the Law is, that all Men should have equal Right done them ; if a Man proves generally insolvent, he ought to be particularly so to. Statutes of Bankruptcy affect not Persons owing a Variety of little Debts, nor Persons out of Trade ; yet People that leave their Country, after a Course of Weakness and Error, in some Measure injure Trade ; there being few People that have the Means of running in Debt, but what, in some Light or other, have had, or find Means still, both to get and spend Money.

It follows, that, considering the Practice of the Law as it now stands, wherein admitting the Debtor to be always the bad principled Man, and the Creditor to be the only Person injured, upon the whole, there is certainly a Necessity of some speedy Remedy: And why a Bill for the more easy and speedy Recovery of small Debts, or Bankruptcy rendered universal, on a less expensive Scheme, should be so much opposed, as the first especially has been, I leave to the Consideration of those whose Interest it is to recover their Debts in the most cheap, easy, and speedy Manner imaginable.

I am blamed for reflecting on the Lawyers in this Particular; they must excuse me: I know the Opposition came from them, and from some of the most eminent among them too: No Trader in his Senses would ever offer to oppose it: The Court of Conscience in *London*, and the Attempts rightly made to encrease its Power, is the best Evidence in the World of their Opinion in this Matter. All honest Men must wish a speedy Means of coming at their respective Debts, or at least of knowing whether they are recoverable or not, without throwing good Money after bad; and, if the Debtor be a Villain, of suffering him to go on in an easy Course of Fraud and deceiving, beyond his Abilities to pay. Men may talk as long as they please of Credit; but in general, I believe it will be found true, that Credit, as it stands, is a Dream, and that ready Money Dealings can only establish true Credit. The Town of

of Cork in *Ireland*, I am told, has established its Trade on this Principle. Common Sense intimates to me its Rectitude in all Retail Dealings; and sometimes, perhaps, would not be amiss in the Wholesale. In the last Case, a Man could not break for Ten thousand Pounds that was never worth a Groat; nor in the first, a Beau be decked out in all the Colours of the Rainbow, that was never entitled to appear above the Character of a Journeyman. Men may talk of Trade as long as they please, and think they understand it too, when nothing, in Fact, is more true, than that they who build on vague Credit, attempt to raise its Superstructure on a Quick-sand, and I am sorry to say, I know that the principal Obstructors of Insolvent Acts are those who choose to lie in Jail, and to live there on their Creditor's Money.

The Creditor himself is oftentimes deceived, and throws the Debtor in Prison without intending it, thus:

He commences his Action for a small Sum, of 10*l.* &c. the Debtor cannot pay, nor will oppose; the Cause goes on to Judgment; the Bail surrender the Debtor; and the Plaintiff's Attorney delivers his Bill of Costs. The Plaintiff startled at a Debt, due from himself to his Attorney, equal to that sued for, runs away to his Debtor, and offers to discharge him on Payment of Costs only: But how, in the Name of Nonsense, could he expect it? However, this aggravates the Affair between them, and the poor Wretch is condemn'd to Imprisonment for Life; and his

his Family, after pawning what little they have for Substance, go to the Parish, and the Man perishes in Jail for Want. Thus the Community, instead of having the Aid of One to support many, have many to support without Aid. This perhaps is the most common Case of any.

In common Assults, from whence perhaps nothing more results than mere Hurts and Bruises, the Assulted has the peculiar Protection of the Legislature, and the Assaulter may be punished more Ways than one; but for the Starving of a Man and his Family there is no Remedy, because he does this by the Aid of the Law. Now the Law either intends this, or it does not. It is ridiculous to suppose it intends any such Thing, tho' it happens in Consequence; but if it appears to happen in Consequence, it is presumed to be intended. And if the Law doth not intend it, and yet it happens, why is it not remedied?

The general Maxims of all Governments claim Pre-eminence to the Interest of all Individuals; and having a Right to the Service of the Subject, cannot, without Violence to its Power, suffer him to be shut up in Prison. Nor is the Creditor injur'd by his Release on right Principles, tho' the Community is, by his being confin'd. To support one Man in his Malice to the Ruin of another, and at the same time to the Injury of the Community, is setting Government in the idlest Light imaginable, and turning a Commercial State into a Forest of wild Beasts,

Beasts, at full Liberty to devour one another. The great End of Government is Peace, Love, and social Unity. Let the Aggressor be punished in some Degree in God's Name; but don't let us for Trifles make his Miseries endless, by putting it absolutely out of his Power, either to preserve himself, redeem his Credit, or make Restitution to his Creditors.

In my Opinion, particular Acts of Insolvency in no Sense answer the End here aim'd at. There is some universal Law or Rule wanted, whereby to distinguish the Weak, Hapless, and Unwary, from the Wicked and Designing; and this preceded by a general Act of Grace or Insolvency, first to set all Things even; and afterwards, to keep them so, even the evidential Wicked should be made some way useful, rather than constantly confin'd. I know, if long perplex'd Statutes are made on this Head, what will be the Consequence, well enough; the Remedy will be worse than the Disease, and will be only increasing Quibble and Confusion. The short Method, I humbly presume, may be this: As to the great Prisons within the Bills of Mortality, a Committe of the House of Commons, with the Aid of some of the Noble Lords, if so agreed, might every Sessions discharge such Persons as they found Objects of the publick Clemency, on such Terms as might be settled by a very concise Statute; and in all other Prisons, the Magistrates of the respective Districts might do the same; with full Power, by Precept, to seize into their Hands

Hands the Effects of such as avoided paying their just Debts, and punishing them as Felons, on not truly discovering their Estates and Effects ; as also, of punishing in the same Manner those who co-operated with them in any Act of Fraud or Collusion. By this Means, those who have Effects might not remain in Prison and squander them away, nor those that have not, be continued there. People also that made a Practice of getting into Debt, might be here properly consider'd, and those guilty of Frauds, consign'd to the Courts of Judicature, for ample Punishment. A Bill of this Nature, if the Legislature approve, the Principles shall be readily exhibited to them, drawn in a very concise Manner, clear and obvious to the Understanding of the weakest Man, and no Way interfering with, or perplexing, any Laws now in Force. Or, if the Legislature best approved it, this might be transacted within the Bills of Mortality by Commissioners, with handsome Salaries, payable only on the Days they sit to do Business ; under proper Rules and Restrictions, appointed and paid by his Majesty, but accountable for their Conduct to annual conjunct Committee of both Houses. Six worthy Men, with only 200l. a Year, if annual Payments were thought best, might transact this in the Vacations, with great Facility ; and, I humbly conceive, would put a final End to Oppression, and be the surest Means of doing the best Service to honest Creditors, put it out of the Power of unjust Men to

play Tricks, re-establish Civil Government on its right Basis, and make a Trading Nation rejoice.

The Reason and Necessity of some general Law, relative to insolvents, has been argued hitherto upon Principle only. We are now to support our Argument, by shewing how the wisest trading People act in similar Cases.

In *Holland*, the Laws of Bankruptcy are general, and respect all People equally. They take it for granted, that the Plaintiff's Claim is just, unless the Defendant swears the contrary; and Perjury being punished with Death, makes the Issue very short, and in no Sense expensive. The Commissioners appointed to adjust all Differences between Creditor and Debtor, are vested with a Power much like our Lord Chancellors; but I think their Judgment not appealable from. The great Principle they act upon is, so to do Justice to the Creditor, as that the Debtor may not become useless or burthensome to the Community; and he is favoured or punished, as it appears to the Commissioners, how he has conducted himself. There is nothing like legal Preference; as in the common Course of the Laws here, every Insolvent is a Debtor, and his Effects must be equally shar'd among his Creditors, with such a Reserve to the Debtor as his Conduct shall be found to merit, and the Nature of his Occupation require. If he is found an idle Fellow, his Punishment is proportioned; if a Villain, very

very severely punish'd ; but if a thorough honest Man, which must appear by his Accounts, his Misfortunes are not permitted to be his Ruin. If his Creditors will not encourage him, the State will, and lend him any Sum that is necessary, and suited to his Course of Trade. This not only keeps all their Subjects at Home, but encourages others to settle among them ; and makes ever Member of the Community contribute to the general Emolument. In the Course of their Proceedings, there is no such Thing as wasting the Debtor's Effects, either on expensive Commissions, Law-Suits, or Assigneeships ; the Commissioners are paid by the State, and direct the Disposition and Distribution of the Effects, without any Charge to the Parties.

These Commissioners are named every Year by the Magistrates of *Amsterdam*, for what regards all Transactions within the Precincts of that Capital ; and form a Judicature, somewhat like the Court of Aldermen at *London*. They meet on particular Days in an appropriated Chamber in the Stadt-House, over the Door whereof is carv'd in Marble, the Figure of *Icarus* falling, for having soar'd too high ; and round it, Chests turn'd upside down, with Mice and Rats eating the Books, Money-Bags, &c. apt Emblems of Men ruin'd by Presumption, want of Skill, or Negligence. There they receive Petitions from Debtors and Creditors, and, as Occasion presents, summon the respective Parties to appear before them, when Matters are compos'd on the simple Principles of Equity,

without the least Use, or Services for Advocates or Attornies.

If these Commissioners find that the Debtor is come to Decay by unexpected Losses, and unavoidable Accidents, whereunto he did not at all contribute, it is their usual Way to propose to the Creditor, such amicable and easy Terms as the Debtor may be able to perform ; allotting sometimes the Half of the Estate, or less ; and sometimes proposing to the Creditors to advance a Sum on the old Demand, that the Debtor may be thereby enabled to recover himself, and in due Course of Time pay the Whole.

There is not only Humanity, but Policy in this : The Commissioners evidently perceive, that the Welfare of the State depends on every Man's doing well ; therefore to aid the Distressed is the very Soul of Policy. This Point has been so wretchedly mistaken here, that the general Scheme of Men in Power, has been to make the Rich richer, little dreaming that they were at the same Time sapping the very Foundation whereon themselves stand.

If the Commissioners find that the Trader has dealt knavishly, and broke, as is common with us, purposely to begin again on a better Bottom, hath kept false Books, created imaginary Bills of Exchange, negociated Inland Notes collusively, or pretended Commissions from Abroad, in order to impose upon, or deceive others, he is sometimes imprison'd, sometimes punished corporally, and,

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if his Crime be very heinous, decently hanged out of the Way.

After all, if the Creditor insist upon it, the Debtor may be imprisoned ; but as the State know that thereby they lose a Member of the Community, he shall only continue there a short Time, until his Affairs are further enquired into, and that at the Expence of the Creditor ; then he must swear himself not worth forty Gilders, over and above his Wearing-Cloaths and Working-Tools, and is acquitted.

The entering further into this Enquiry, is too prolix for the Limits of this Discourse. The old Hanse heretofore, and what Towns still adhere to that Union, as *Hamburg, &c.* in a Word, all Commercial States, *England* excepted, ever did reason and act on similar Principles, and are such that no Nation ever varied from, but where the Government was negligent, or partial Views were set in Composition with the Welfare of a Community. They who pretend to reason on Government, and justify the suffering of Individuals to revenge themselves on each other, must have had their Education in a Wilderness, where the right Use of Laws, and Principles of Humanity, were never dreamed of : Where nothing but Reputation gives a Man Credit, his Resource is in Reputation only, and he must preserve it or starve : But where Credit is given at random, without being aided by any effectual Law to come easily at the Debtor's Effects, or to distinguish between the Wicked and Unhappy, I should think that People

People in infinitely a happier State, who lived without any Law among them.

It seems now extremely necessary to take Notice of some Clauses, in the Acts of Insolvency, which have passed formerly, That in Case the Legislature shall think it right, to pass either a general or particular Act, those Points may be duly reconsidered, which seem not justly calculated to answer the main Intent of such a Law.

I shall first suppose, that the Act intended, is only to answer a present Purpose, of releasing such Prisoners as are now, or have been some time past in Custody, or out upon Bail, or other Security to the Sheriffs of the respective Counties, &c. Then the first Clause in the former Act that occurs, is that which simply regards the giving Notice to Creditors, and is in the said last Act so particulariz'd, as to render the whole Act almost useless. *It says, that Notice shall be left for, or serv'd upon the Person or Persons, his or their Executors or Administrators, or some or one of them, or his or their Attorney, Solicitor, or Agent, last employed in the Cause or Causes, by the said Plaintiff or Plaintiffs, at whose Suit the Prisoner, or Prisoners, shall be imprisoned; and every Prisoner confined in Prison, within the City of London, or Weekly Bills of Mortality, shall cause the like Notice to be given, to every other Creditor, inhabiting, or otherwise residing within the said City, or Weekly Bills;* and also, that the like Notice shall be given, to every other Creditor, inhabiting, or otherwise residing within Ten Miles of the Prison, where such

Such Prisoner shall be in Custody; which said Notice shall be left with, or serv'd on the Person or Persons as before directed, Thirty Days before the General or Quarter Sessions, &c. which Clause supposes, that either all the Creditors have charg'd their respective Debtors in Custody, or that the Debtors know all their Creditors; neither of which may be the Case of one in Twenty: For in all assignable Debts, such as Negotiable Notes, &c. the real Creditor, who has the Note in Custody, cannot be certainly traced out, especially if assigned from Hand to Hand, purposely to entrap the Debtor in this Clause, and to throw him into Prison again. This considered, I humbly presume, a Clause to the following Purport, would be ample Notice, *viz.* "That each Party taking the Benefit of this Act, shall pay to the Clerks of the Peace, within their respective Districts, the Sum of Six-pence; in Consideration whereof, a Printed List shall be formed of all Prisoners, their Names, Callings, and usual Habitations, in distinct Paragraphs; and the same posted up, on every Market-House, May-Pole, Turnpike, City-Gate, or other most publick and notorious Place, to continue six Weeks before any Prisoner be released, and the Name, &c. likewise printed in the Gazette, in the same Manner, three Times before such Releasement," which, I humbly conceive, would be ample Notice, and effectually avoid all future Litigations.

As to that Clause of the Act, which relates to the making of the Debtor's Effects, liable in the Future, I am afraid has not been thoroughly considered. The End of such an Act, seeming to be, the putting of Men again into a Condition of being serviceable to themselves, and to the Community, by supporting their Families, and pursuing an honest Industry ; and if that be the View, I do not see how this End is answered, if this Clause be continued, as it is rather calculated, to drive them out of the Nation, than to make them useful in it. For who that is industrious, and intends to live, can stay in it, without a Possibility either of Credit, or getting a Farthing before-hand. No body can have Credit, because the Instant Goods are delivered into their Custody, they become the Property of former Creditors : This is laying the Hardship upon the most creditable Debtors, while the Idle and Worthless have nothing to fear, and is pushing well designing Men, on Schemes of Fraud and Perjury ; and subjecting them to the eternal Persecution of every Creditor distinctly, and thereby rendering it impossible ever to pay any ; and as by this Clause, any one may act at his Pleasure, and as the Costs will be part of the Debt, I do not see, how it will ever be possible for the Debtor, either to pay any body, or to go on with any Kind of Business ; which surely is not the Intention of an Insolvent Act.

This was rightly considered in the Case of Bankruptcies, The having a Man's all, is rightly

rightly judg'd sufficient, and even; on paying certain Part of the Debts, there is an Allownace made him, which I wish might be likewise considered here, as it might not only tend to prevent Perjury, but might be a Benefit to the Creditor, and as this A&t is only a Bankruptcy, with less Expence to the Parties, it should be equally beneficial in every Respect, unless Men will say, that he who only owes Ten Pounds, merits not equal Favour with him that owes a Thousand; which I conceive, no Man his Senses would call Reasoning.

In a Word, the Clause, as it stands, seems purely calculated to create Perplexity and Confusion, to deprive the Debtor of all possible Means of ever recovering himself, can answer no End in favour of the Creditor, and is only to make Work for the Lawyers, Bailiffs, &c. For, let the Intention of the Debtor be never so good, it is morally impossible he can ever do his Creditors Justice, if subject to eternal Persecution from them distinctly.

The next Clause that I shall presume to remark, is that which excludes Bankrupts from the Benefit of this A&t: At first Sight, I own, I could not enter into the Mystery of this, but being since furnished with the Reasons, I am better prepared to consider it.

It seems, that one *Isaac Levy*, a Bankrupt, was, in *July 1734*, committed to the *Fleet*, on the Commissioners Warrant, for refusing to answer Interrogatories exhibited to him, to the Satisfaction of the Commissioners; he

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had, it seems, taken Goods on Credit, not above six Months before, to the Value of eight or 10,000*l.* and a very small Portion of his Effects were come to their Knowledge; which very justly exasperated his Creditors, who kept him in Prison.

In the Year 1736, an Act of Insolvency passed, previous whereto his Creditors made their Application to the Legislature, and procured a general Clause of Exception against Bankrupts, which was continued by the last Insolvent Act.

It is certainly true, that Bankrupts, committed for Contempts, should not be released by an Insolvent Act, which intends not the Relief of those who have it in their own Power, no more than in other Cases of Contempt; but this Cause being general likewise excludes those the Benefit, who have really conform'd, that have divested themselves of all their Effects, and are detained by the Malice of particular Creditors, who refuse to receive their Dividends. In this Light, I humbly conceive, they stand on the same Footing with other Debtors, and are consequently equally intitled to the Grace of the Legislature; and therefore humbly offer, as an Amendment to that Clause, *That all Bankrupts shall be excepted, who have not conformed to the Statute, in such Cases made and provided; and not committed by the Court of Chancery, or the Commissioners, for any Contempt, whereof they have not clear'd themselves.* — After thus cursorily pointing out the necessary Amendments, to a temporary Insolvent

Insolvent Act, it is next necessary to consider the Use and Advantage of a perpetual one ; and if, on considering this Matter seriously, it shall be found more beneficial for the Creditor, better answering the Interest of the Commonwealth, and really an Encouragement to Credit ; I doubt not but it will meet with the Attention of the Legislature, especially if it shall appear, That a very short Statute will do the Business effectually. —

I conceive every Body will agree with me, That the Debtor is much more able to make his Creditors Satisfaction before he goes to Prison than after.

The Creditor readily assents to this, but if his Design be merely to get his Money, he reasons thus : — The Debtor has Relations or other Friends, perhaps they may pay it for him. — If he finds himself mistaken, the Costs have aggravated the Debt ; and the Injury, tho' of his own creating, as to the Costs, gets the better of his Compassion, and the poor Wretch languishes the Remainder of his Life in a Jail. Now this has the same Effect as Malice, tho' the Intention be at first different ; yet it is clear, that could the Creditor have got but a single Guinea out of Twenty due, he would have been 15*l.* at least a Gainer.

In large Debts it is still worse, for after *Judgment in Case*, the Interest subsides, and becomes added to the Costs, and then could the Creditor only have got his Interest from time to time, his Gain would be that, and Costs, which by Imprisonment are both lost.

I believe, I need not observe, that the Persons imprisoned, during the Course of the Year, within the Bills of Mortality, are at least equal to all the rest of the Kingdom; nor that the Reason is partly owing to the Circulation of Trade, and partly to the Court, and all the public Offices being established here, which together attract a suitable Number of all Ranks and Degrees of People, and whose Business being chiefly to push their Fortunes, venture often a little indiscretely to take Credit, on Terms, perhaps, not the most moderate, and missing their wished, or hoped-for Success, are suddenly imprisoned; when if it was considered, that those who give them Credit, do it in effect on the like Terms, as those who lend Money on Bottomree, tho' not so expressed in Writing, yet in Equity ought to be liable to the same Contingences, or at least be intitled to no more than they should have had, if a knowing Man had paid them ready Money.

I believe Experience has taught all Men this Truth, That very few refuse to pay, who have means to do it; and if they have Means and will not pay, I conceive, that they should be obliged to do it, without going to Jail; and such Obligation may be form'd with infinite Facility.

The next Defects in Payments arise, either from Extravagance, Weakness, or Misfortunes; if the First, and the Money is all spent at home, though never so idly, however it may hurt the Persons giving Credit, is not so fit to the Community, and therefore though culpable

culpable enough, not to be considered in quite so bad a Light, as some warm Imaginations would suggest, provided no apparent Fraud is discovered. My Reason is, because I do not conceive how it is possible for Men unknown to get Credit; and if they are known to be extravagant and idle, how comes it to be given them? A thorough Enquiry into this Matter will set Things in a very different Light to what they now appear, and it will, I doubt not, be found, that the Creditor is the Rogue in Design, whoever may prove so in the Consequence. A young Fellow, furnished with fine Cloaths, or credited on negotiable Notes, which are the most general Cases in one Branch of Debtors, ought only to be considered as Schemes for the *Taylors* and *Usurers* to get Estates, and if they are sometimes deceived in their Views, ought the Commonwealth or themselves to be the Sufferers?

Between Trader and Frader it is much the same Thing in general; the Custom being, when a young Fellow is just come out of his Time, he is usually set up upon Credit, and is rather a Factor for the great Dealer, than trading for himself; he is at best only used as a common Channel of Trade, and if he is so weak as to live as if the Goods were his own, those who give him Credit are still weaker, to trust a Man highly, before he has approved himself by his Industry.

This brings us to consider seriously the Nature of Credit, which, I conceive, in honest Dealings is plainly this: That in common Life,

Life, a Man should be either thoroughly known, or at most trusted for common Necessaries, and the pernicious Practice of playing Tricks with negotiable Notes be entirely annihilated, as they have been the Cause of ruining more Men, and the Foundation of more Knavery, than all other Things put together, by a Variety of Means too tedious to recite in this Place.

In Trade the Necessity of Trusting seems to me obvious as Light, but is it not as obvious, that Men should first approve themselves worthy of being trusted, by shewing their Skill, Diligence, Oeconomy and Sobriety on their own Bottoms? For why need Youth on a sudden be elevated, by monstrous Credit, above the Pitch of their Capacities? And if they be, who is to blame, the Creditor, or Debtor? I know not how it happens, in these Days Men are thought as fit for Business at twenty, as at forty Years of Age: Common Sense has nothing to do with this, nor is there any Necessity in Trade for a Man to jump into his Coach of a sudden; this has nothing to do with rational Credit, nor do I conceive, that any Person ought to suffer for failing, when he is as it were wing'd into these false Flights by his Creditors. This, instead of putting Trade on a right Footing, only sets People a Scheming, how most effectually to ruin one another. If a great Dealer first gives large Credit to a young Fellow, this only contributes to draw in others; and if the inexperienced Person fails, I conceive, he that was first the Cause, by giving him high Credit,

dit, ought to answer all the Consequences ; on the contrary, it is but too apparent, that such generally contrive, either to draw off in time, or in some Measure to indemnify themselves, by getting in to be Assigns, and keeping the whole Money recovered in their Hands long enough, by its Use, to make them ample Amends.

In the Case of small Debts, which is perhaps more particularly the Point before us, the Sufferer's Unhappiness, perhaps, consists more in his getting Bail, than if he went immediately to Prison ; his Hopes of being able to pay in the Event, being what deceives him, and the little Money he gets from time to time towards it, is thrown away either on Law, or what is worse, on Bail and Bailiffs. This is Destruction eminent without Possibility of Redrefs, and if in the Event he is able to adjust one Debt, it only produces a worse ; and thus carried on from one Entanglement to another, he is ruined and undone past all Hopes of Recovery, except in the Equity and Favour of the Legislature.

These Points are most humbly submitted to the Judgment of the Legislature, to be considered, canvassed, and applied. They are such as I challenge any Man to answer. I confess, I have a great deal more to say, if Illustration be needful, which I humbly conceive is not, unless the Weakness or Instability of these be first exploded, by either shewing, that the Facts are false, the Reasoning vague, or the Remedy impracticable. To all which

I am

I am ready to reply, and I hope fully to the Satisfaction of that honourable Assembly, to whom I must humbly appeal, and pray to redress these notorious Grievances, in such Manner, as to them shall appear most Just.

F I N I S.





